

SUPREME COURT OF FLORIDA

DONALD JAMES SMITH,

Appellant,

CASE NO.: SC18-0822

v.

STATE OF FLORIDA,

Appellee.

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**RESPONSE TO THE STATE'S MOTION TO
CLARIFY OPPOSING COUNSEL'S NOTICE OF APPEARANCE**

On November 19, 2018, undersigned counsel filed a notice of appearance with this Court. On February 14, 2019, the State filed its Motion to Clarify Opposing Counsel's Notice of Appearance. On March 4, 2019, this Court issued an order requesting undersigned counsel respond to this motion.

Undersigned counsel certifies, in accordance with Florida Rule of Criminal Procedure 3.112(i), that he meets the minimum standards for attorneys in capital cases. This certification is based on the undersigned's experience, knowledge, and training in accordance with the minimum requirements as outlined in Florida Rule of Criminal Procedure 3.112(h). This rule states that an attorney representing individuals on direct appeal must meet each of the following minimum requirements:

- (1) are members of the bar admitted to practice in the jurisdiction or admitted to practice pro hac vice; and
- (2) are experienced and active trial or appellate practitioners with at least five years of experience in the field of criminal law; and
- (3) have prior experience in the appeal of at least one case where a sentence of death was imposed, as well as prior experience as lead counsel in the appeal of no fewer than three felony convictions in federal or state court, at least one of which was an appeal of a murder conviction; or alternatively, have prior experience as lead counsel in the appeal of no fewer than six felony convictions in federal or state court, at least two of which were appeals of a murder conviction; and
- (4) are familiar with the practice and procedure of the appellate courts of the jurisdiction; and
- (5) have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases; and
- (6) have attended within the last two years a continuing legal education program of at least twelve hours' duration devoted specifically to the defense of capital cases.

Undersigned counsel represents to the Court that he meets each of these requirements, as detailed fully below.

Undersigned has been a member of the Florida Bar in Good Standing since April 2012, Fla. R. Crim. P. 3.112(h)(1), and a member in Good Standing of the New Jersey Bar and Georgia Bars since 2013 and 2014, respectively. Prior to admission with the Florida Bar, undersigned began practicing law as Certified Legal Intern with the Office of the State Attorney, Fourth Judicial Circuit, and once admitted, was an

Assistant State Attorney in the Fourth Judicial Circuit, Duval County Florida. Fla. R. Crim. P. 3.112(h)(2). Since that time, undersigned has continuously practiced criminal law as both a trial and appellate practitioner, as well as practices in other areas. Fla. R. Crim. P. 3.112(h)(2).

Undersigned has prior experience as lead counsel in the appeal of no fewer than six felony convictions in state court, at least two of which were appeals of a murder convictions. Fla. R. Crim. P. 3.112(h)(3). As detailed fully below, undersigned counsel has been lead counsel in forty criminal appeals arising from felony convictions and sentences, several of which arise from murder convictions.

Additionally, while not lead counsel, undersigned was also part of the team of lawyers working on a post-conviction motion and hearing arising from the imposition of the death sentence following a conviction of first-degree premeditated murder. *See Simpson v. State of Florida*, 16-2012-CF-011026 (Duval Cir. Ct.)

Undersigned is also familiar with the practice and procedure of the appellate courts in the State of Florida. Fla. R. Crim. P. 3.112(h)(3). Undersigned is familiar with both criminal appeals as well as civil appeals in each of the district courts of appeal. Undersigned counsel has been lead counsel in an additional twenty three civil appeals throughout the State of Florida, including each of the five district courts of appeal.

Since beginning to practice, undersigned has endeavored to demonstrate the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases by working to educate himself above and beyond the required educational requirements as mandated by the Florida Bar, as demonstrated by the list of certified legal education below. Fla. R. Crim. P. 3.112(h)(5).

Finally, within the last two years undersigned has attended a continuing legal education program of at least twelve hours' duration devoted specifically to the defense of capital cases. Fla. R. Crim. P. 3.112(h)(6); *See* Mitigation and Sentencing for *Miller* and Death Penalty Clients—August 2, 2017 (14.5 hours) and Juvenile Resentencing Seminar (Re: Eighth Amendment Issues)—June 23, 2017 (12 hours).

Based on the foregoing, and as further detailed below, undersigned certifies that he meets the minimum requirements to represent Mr. Smith.

Respectfully submitted,

/s/Rocco J. Carbone, III

ROCCO J. CARBONE, III

LAW OFFICES OF ROCCO J. CARBONE, III, PLLC

135 JENKINS STREET 105B #110

ST. AUGUSTINE, FL 32086

TELEPHONE: (904) 599-3238

EMAIL: Rocco@carboneappeals.com

SECONDARY EMAIL: Rocco@rjc3law.com

FLORIDA BAR NO.: 0095544

COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, via electronic mail, on this 19th day of March 2019 to Assistant Attorney General Charmaine Millsaps at charmaine.millsaps@myfloridalegal.com.

Respectfully submitted,

/s/Rocco J. Carbone, III
ROCCO J. CARBONE, III

CASE LIST

- 1) *Mincey v. State of Florida*, 1D17-2759 (direct appeal from conviction and sentence for murder in the second degree and possession of a firearm by a convicted felon) (Lead Counsel).
- 2) *Andrew Bernall Jones v. State of Florida*, 1D18-2277 (direct appeal from conviction and sentence for attempted murder in the first degree, et al) (Lead Counsel).
- 3) *Jordan A. Gadson v. State of Florida*, 1D16-3327 (appeal of denial regarding post-conviction motion arising from first degree murder conviction) (Co-Counsel).
- 4) *DeRae Jenkins v. State of Florida*, 1D17-2138 (appeal from denial of post-conviction motion arising from conviction and sentence for attempted first degree murder, et al) (Lead Counsel).
- 5) *Anthony Williams v. State of Florida*, 5D17-1992 (appeal from denial of resentencing hearing for juvenile offender charged as an adult arising from conviction and sentence for first-degree premeditated murder) (Lead Counsel).
- 6) *Frankie Hayes v State of Florida*, 5D17-4061 (direct appeal from conviction of lesser included offense of aggravated battery with a firearm and sentenced to thirty years; however, charged with attempted first-degree murder) (Lead Counsel).
- 7) *Joshua Phillips v. State of Florida*, 1D17-5383 (appeal from resentence to life imprisonment for juvenile offender convicted of first-degree premeditated murder and sentenced as an adult) (Lead Counsel).
- 8) *State of Florida v. Charleston D. Griner*, 1D18-4849 (appeal from post-conviction motion regarding juvenile offender sentenced to life seeking a resentencing arising from murder conviction) (Lead Counsel).
- 9) *Richard Craven v. State of Florida*, 1D18- 5270 (petition for writ of prohibition following Stand Your Ground hearing for immunity based on right

of self-defense in pending attempted second-degree murder prosecution) (Co-Counsel).

- 10) *Cynthia Craven v. State of Florida*, 1D18-5272 (case number pending; petition for writ of prohibition following Stand Your Ground hearing for immunity based on right of self-defense in pending attempted second-degree murder prosecution) (Co-Counsel).
- 11) *Jeffrey Charles Murphy v State of Florida*, 2D18-2492 (appeal from resentencing to life imprisonment for juvenile offender convicted of first-degree premeditated murder and sentenced as an adult) (Lead Counsel).
- 12) *Simpson v. State of Florida*, 16-2012-CF-011026 (Duval Cir. Ct.) (post-conviction motion following conviction for murder and death sentence) (Assistant Counsel).
- 13) *Romen Junicholas Callaway v. State of Florida*, 2D18-0598 (direct appeal from conviction for aggravated battery with a deadly weapon) (Lead Counsel).
- 14) *Michael Raymond York v. State of Florida*, 2D18-3214 (direct appeal from conviction for attempted sexual battery) (Lead Counsel).
- 15) *Delorean Feaster v. State of Florida*, 2D17-3612 (direct appeal from conviction for aggravated battery) (Lead Counsel).
- 16) *Vance McMillan v. State of Florida*, 3:17-cv-876-LC-CJK (petition for writ of habeas corpus arising from conviction for capital sexual battery and life sentence) (Lead Counsel).
- 17) *Fred Gray v State of Florida*, SC18-629 (post-conviction appeal regarding sentencing error) (Lead Counsel).
- 18) *Steven Sharek v. State of Florida*, 5D17-2475 (direct appeal from felony conviction) (Lead Counsel).
- 19) *Lemonty Thompkins v. State of Florida*, 5D17-1046 (direct appeal from felony conviction) (Lead Counsel).

- 20) *David Elkin v. State of Florida*, 2D17-1750 (appeal from denial of post-conviction motion) (Lead Counsel).
- 21) *State of Florida v. Mark Bradley Snook*, 5D17-2362 (direct appeal from dismissal of felony information against appellee) (Lead Counsel).
- 22) *Russell Lloyd Post v. State of Florida*, 5D17-2085 (direct appeal from violation of injunction, et al.) (Lead Counsel).
- 23) *Mincey v. State of Florida*, 1D17-2312 (direct appeal from felony conviction) (Lead Counsel).
- 24) *Johnny Roger Johnson II v. State of Florida*, 5D17-2466, (direct appeal from felony conviction) (Lead Counsel).
- 25) *Joshua Robinson v. State of Florida*, 1D18-4318 (direct appeal from felony conviction) (Lead Counsel).
- 26) *Blanco v. State of Florida*, SC17-1042 (jurisdictional brief requesting discretionary review due to express and direct conflict) (Lead Counsel).
- 27) *Daryl Lewis Davis v. State of Florida*, SC16-1738 (appeal from district court of appeal granting petition for writ of habeas corpus) (Lead Counsel).
- 28) *Daryl Lewis Davis v. State of Florida*, SC16-1739 (appeal from district court of appeal granting petition for writ of habeas corpus) (Lead Counsel).
- 29) *Qavontae MacHell Lang v. State of Florida*, 1D16-2930 (direct appeal from felony conviction) (Lead Counsel).
- 30) *Diego Tambriz-Ramirez v. State of Florida*, SC17-713 (appeal from post-conviction motion) (Lead Counsel).
- 31) *Colby Smith v. State of Florida*, 1D17-3478 (petition for writ of habeas corpus arising from manifest injustice and inconsistent verdict) (Lead Counsel).

- 32) *Alexander Dean v. State of Florida*, 1D16-16-5512(direct appeal from felony conviction) (Lead Counsel).
- 33) *Tyrone Williams v. State of Florida*, SC16-785 (appeal from post-conviction motion arising from a certified conflict) (Lead Counsel).
- 34) *Roger Dennis Churchill, Jr. Churchill v. State of Florida*, SC16-654 (appeal from dismissal of appeal due to express and direct conflict regarding whether issue appealed was dispositive of the case) (Lead Counsel).
- 35) *Jose Martinez v. State of Florida*, SC15-1620 (appeal from post-conviction motion) (Lead Counsel).
- 36) *Payne v. State of Florida*, 1D18-4744 (direct appeal from first-degree premeditated murder conviction and life sentence) (Lead Counsel).
- 37) *Payne v. State of Florida*, 1D19-0061 (direct appeal from violation of probation due to a new law violation) (Lead Counsel).
- 38) *Payne v. State of Florida*, 1D19-0063 (direct appeal from violation of probation due to a new law violation) (Lead Counsel).
- 39) *Hayes v. State of Florida*, 1D18-3876 (direct appeal from first-degree premeditated murder conviction and sentence) (Lead Counsel).
- 40) *Keith Lavelle Hicks v. State of Florida*, 2D18-4520 (direct appeal from felony conviction and sentence) (Lead Counsel).
- 41) *M.R., et al v. Department of Children and Families, et al*, 1D18-2065 (representing the interests of the child on behalf of Florida's Guardian ad Litem) (Lead Counsel).
- 42) *J.S., III., et al v. Department of Children and Families, et al*, 1D18-0143 (representing the interests of the child on behalf of Florida's Guardian ad Litem) (Lead Counsel).

- 43) *B.B. et al v. Department of Children and Families, et al*, 1D18-0143 (representing the interests of the child on behalf of Florida's Guardian ad Litem) (Lead Counsel).
- 44) *L.G., et al v. Department of Children and Families, et al*, 1D17-4834 (representing the interests of the child on behalf of Florida's Guardian ad Litem) (Lead Counsel).
- 45) *P.M., et al v. Department of Children and Families, et al*, 2d18-3126 (representing the interests of the child on behalf of Florida's Guardian ad Litem) (Lead Counsel).
- 46) *K.A, et al v. Department of Children and Families, et al*, 2d18-2298 (representing the interests of the child on behalf of Florida's Guardian ad Litem) (Lead Counsel).
- 47) *K.O., et al v. Department of Children and Families, et al*, 2D18-2021 (representing the interests of the child on behalf of Florida's Guardian ad Litem) (Lead Counsel).
- 48) *T.M., et al v. Department of Children and Families, et al*, 2D18-1723 (representing the interests of the child on behalf of Florida's Guardian ad Litem) (Lead Counsel).
- 49) *R.W., et al v. Department of Children and Families, et al*, 2D18-1636 (representing the interests of the child on behalf of Florida's Guardian ad Litem) (Lead Counsel).
- 50) *T.S., et al v. Department of Children and Families, et al*, 2D18-0634 (representing the interests of the child on behalf of Florida's Guardian ad Litem) (Lead Counsel).
- 51) *M.K., et al v. Department of Children and Families, et al*, 2D18-0465 (representing the interests of the child on behalf of Florida's Guardian ad Litem) (Lead Counsel).

- 52) *C.H., et al v. Department of Children and Families, et al*, 2D17-4921 (representing the interests of the child on behalf of Florida's Guardian ad Litem) (Lead Counsel).
- 53) *Chad Burnett v. Wade Gunn's Pain Free Product, LLC, et al*, 2D17-1018 (represented appellee in discovery dispute and award of attorneys' fees) (Lead Counsel).
- 54) *G.M.R., et al v. Department of Children and Families, et al*, 3D18-1404 (representing the interests of the child on behalf of Florida's Guardian ad Litem) (Lead Counsel).
- 55) *P.B., et al v. Department of Children and Families, et al*, 3D18-0521 (representing the interests of the child on behalf of Florida's Guardian ad Litem) (Lead Counsel).
- 56) *C.A., et al v. Department of Children and Families, et al*, 3D17-2713 (representing the interests of the child on behalf of Florida's Guardian ad Litem) (Lead Counsel).
- 57) *C.J.L.M., et al v. Department of Children and Families, et al*, 4D18-0836 (representing the interests of the child on behalf of Florida's Guardian ad Litem) (Lead Counsel).
- 58) *K.M., et al v. Department of Children and Families, et al*, 4D1-0791 (representing the interests of the child on behalf of Florida's Guardian ad Litem) (Lead Counsel).
- 59) *G.W., et al v. Department of Children and Families, et al*, 4D18-0025 (representing the interests of the child on behalf of Florida's Guardian ad Litem) (Lead Counsel).
- 60) *J.M., et al v. Department of Children and Families, et al*, 5D17-1182 (representing the interests of the child on behalf of Florida's Guardian ad Litem) (Lead Counsel).

- 61) *N.M., et al v. Department of Children and Families, et al*, 5D17-1179 (representing the interests of the child on behalf of Florida's Guardian ad Litem) (Lead Counsel).
- 62) *G.P., et al v. Department of Children and Families, et al*, 5D17-1068 (representing the interests of the child on behalf of Florida's Guardian ad Litem) (Lead Counsel).
- 63) *T.B., et al v. Department of Children and Families, et al*, 5D17-0807 (representing the interests of the child on behalf of Florida's Guardian ad Litem) (Lead Counsel).

RELATED TRAINING: CERTIFIED LEGAL EDUCATION

- Mitigation and Sentencing for *Miller* and Death Penalty Clients—August 2, 2017 (14.5 hours)
- Juvenile Resentencing Seminar (Re: Eighth Amendment Issues)—June 23, 2017 (12 hours)
- Quo Warranto: By What Warrant—June 22, 2018 (1 hour)
- Using Technology to Make Judge-Friendly Briefs—April 9, 2018 (1 hour)
- Evaluating Your Appeal—April 9, 2018 (1 hour)
- *Gideon* Denied: Appealing Postconviction Motions—March 1, 2018 (4.5 hours)
- Judge Advocate Staff Office Course: Military Justice Portion—October 3-December 1, 2017
- Florida Association of Criminal Lawyers Certification Review Seminar—August 30, 2017 (14 hours)
- United States Supreme Court: Petitions for Writ of Certiorari—August 16, 2017 (1 hour)
- The Hidden Essentials of Appellate Law—July 16, 2017 (8 hours)
- Appellate Board Certification Boot Camp—May 21, 2017 (2.5 hours)
- Appellate Practice A to Z—May 19, 2017 (3 hours)
- Basic Appellate Law 2016—December 28, 2016 (7 hours)
- Advanced Appellate Practice & Certification Review—September 8, 2016 (7.5 hours)
- 2016 Practicing Before the Supreme Court—August 4, 2016 (9 hours)
- Strategic Implications of the Use of Evidence—January 10, 2016 (1 hour)
- Florida Rule of Criminal Procedure 3.220 & *Brady-Giglio* Obligations—December 24, 2015 (2 hours)